IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2174 OF 2005

Vaidya Vikas Charandas Kathane. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr. R. K. Mendadkar for the Petitioner.
Mr.Bhushan Kakade, AGP for the Respondents.
.....

CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

August 5, 2005.

P.C.:

The Petitioner has in these proceedings under Article 226 of the Constitution, prayed for the issuance of a writ, directing the Directorate of Ayurveda (the Second Respondent), to grant to the Petitioner, a higher start up pay of Rs.2500/- in the pay scale of Rs.2200-4000. The Petitioner holds a degree qualification of BAMS and a Post Graduate Diploma in Swasthavritta. He was appointed on the post of a Lecturer on 31st July 2003 in the pay scale of Rs.2200-4000. It has been averred that the services of the Petitioner were regularised in the post of Lecturer with effect from 25th August 1993. Representations were submitted by the Petitioner to the Second Respondent on 9th July 2002, 29th

October 2002 and 9th October 2003. The Second Respondent rejected the representations on 20th May 2004. Another representation was submitted on 2nd July 2004 and eventually these proceedings have been instituted before the Court.

We had, during the course of these proceedings, called upon Counsel appearing on behalf of the Petitioner to establish the basis in law upon which a claim for higher basic pay is founded. The letter of 21st November 2003 (Exhibit C) addressed by the Central Council of Indian Medicine to the Registrar of the Maharashtra University of Health Sciences only adverts to several Diploma Courses including Swasthavritta and envisages that in the absence of a Degree holder in the concerned subjects, a Diploma holder may be appointed subject to the other conditions contained in the Regulations. Counsel appearing on behalf of the Petitioner has sought to place reliance upon a Government Resolution dated 27th March 1989, a copy of which is annexed at Exh.E to the petition. Ex-facie, the provision for a higher start up pay of Rs.2500/-, that is made in Appendix-I to the Government Resolution is not applicable to the Petitioner since under the heading 'Medical and Dental Colleges' it has been laid down that a

Lecturer with MD/MS qualification would be eligible for a higher start at Rs.2500/- in the pay scale of Rs.2200-4000. Admittedly, the Petitioner does not possess either the MD or an MS qualification. He, therefore, does not fall within the parameters of the Government Resolution for allowing a higher start up basic pay. Higher basic pay is attached to the holder of a specified qualification. The mere fact that the Central Council of Indian Medicine permits the appointment of a Diploma holder in the absence of a Degree holder, would not entitle him to a higher basic pay, in a case such as the present, where he does not possess the qualification stipulated for a higher basic pay. We, therefore, do not find any merit in the petition. The Petition is accordingly dismissed.

.....